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No. 89-535

In the Supreme Court of the United States

OCTOBER TERM, 1989

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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TABLE OF AUTHORITIES

	Page
Cases:	
Baylor v. *New Jersey Dep't of Human Services*, 235 N.J. Super. 22, 561 A.2d 618 (1989)	3, 4
Springer v. *Dep't of Public Welfare*, 562 A.2d 1033 (Pa. Commw. Ct. 1989)	4
Todd v. *Norman*, 840 F.2d 608 (8th Cir. 1988)	2, 3
Statutes:	
42 U.S.C. 652(a)(7)	3
42 U.S.C. 654	3
42 U.S.C. 659	2
42 U.S.C. 662(b)	2
Miscellaneous:	
50 Fed. Reg. 34,693 (1985)	3

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1. In our petition, we explained that the term "child support payments" ordinarily refers to payments by parents to support their children, and not to social security benefits. Pet. 9-12. As evidence of that general usage, we pointed to the repeated use of the term "child support" in the AFDC statute and in other statutes to refer to parental payments, and we pointed out that the term is not used in those sources to refer to social security benefits, including child's insurance benefits. In response, respondents fail to cite a single instance of the use of the term "child support" in a federal statute to refer to social security benefits; instead, they rely on state court decisions which allow child's insurance benefits to satisfy state child support obligations. Resp. Br. in Opp. 8-9 nn. 1 & 2. As the Eighth Circuit has concluded, however, it is inappropriate to rely on such state court interpretations of state child support obligations to interpret the scope of the federal child support disregard provision,

particularly because the varying state laws would lead to inconsistent results. *Todd* v. *Norman*, 840 F.2d 608, 611 (8th Cir. 1988).[1]

In our petition, we also pointed out that a 1988 amendment confirms that the "child support" disregard refers to payments from absent parents. Pet. 14-15. Like the court of appeals, however, respondents fail to address the meaning or effect of this legislation.

2. Although acknowledging that the "disregard statute contains no definition of 'child support' " (Resp. Br. in Opp. 7), respondents nevertheless contend that the Secretary's interpretation of that term is not entitled to deference. *Id.* at 12-13. Respondents' examples of the Secretary's purported "arbitrary, contradictory and irrational" interpretations (*id.* at 12) establish nothing of the kind. Respondents' only examples are (1) the Secretary's interpretation that voluntary parental child support payments are entitled to the child support disregard and (2) the Secretary's interpretation that spousal support payments are entitled to the child support disregard.

Both interpretations, however, are consistent with the Secretary's determination that the disregard for "child support" payments applies to payments from absent parents. With respect to voluntary child support payments, the fact

[1] Respondents also reject the significance of the repeated reference to "child support" in the AFDC statute as parental payments (Pet. 10 n.6) because one of these provisions itself refers to state law. Resp. Br. in Opp. 8. The critical point, however, is that, like the twenty other cited provisions, the provision emphasized by respondents (42 U.S.C. 662(b)) clearly refers to parental payments. The reference to state law in the provision is necessary because that provision defines the "child support" obligations which may be assigned to the State pursuant to 42 U.S.C. 659; it has nothing to do with the characterization of "child support" payments as anything other than a parental obligation.

that payments are made voluntarily does not alter the character of the payments. And with respect to spousal support payments, the AFDC statute consistently treats "child and spousal support payments" together because they are both paid by an absent parent or spouse to the AFDC household. See 42 U.S.C. 652(a)(7); 42 U.S.C. 654. Consequently, it was reasonable for the Secretary to treat them similarly for purposes of the child support disregard. This is particularly true because collection of both child support and spousal support is extremely difficult, and the incentive rationale for the $50 disregard, which the Secretary has accepted (Pet. 12-13), is applicable in both instances.[2]

3. Respondents recognize (Resp. Br. in Opp. 14) that the court of appeals' decision regarding the child support disregard conflicts with the Eighth Circuit's decision in *Todd* v. *Norman, supra*. They contend, however, that the split does not warrant this Court's review because several district and state courts have agreed with the Fourth Circuit (Resp. Br. in Opp. 14-16), and they minimize the significance of a recent state court decision which agreed with the Eighth Circuit.[3] However, the Fourth Circuit and the Eighth Circuit are the only federal appellate courts that have addressed the scope of the "child support" disregard, and they are

[2] Respondents' "statement of the case" misstates the applicable regulations. According to respondents, "[t]he regulations implementing the disregard statute exempt the first $50 of only those support monies which are collected by a IV-D agency [the state agency responsible for child support collection]." Resp. Br. in Opp. 3. As respondents recognize elsewhere in their response (*id.* at 14-15), however, child support payments received directly by the AFDC household also receive the $50 per month child support disregard. 50 Fed. Reg. 34,693 (1985).

[3] Respondents' statement that the recent decision in *Baylor* v. *New Jersey Dep't of Human Services*, 235 N.J. Super. 22, 561 A.2d 618 (1989) is based on state law (Resp. Br. in Opp. 14) ignores the fact that the *Baylor* court expressly "accept[ed] the reasoning of the *Todd*

squarely in conflict. Contrary to respondent's contentions (Resp. Br. in Opp. 14-15), the Eighth Circuit's opinion is well-reasoned, and will have continuing vitality. In light of this clear split in the Circuits, the issue is ripe for resolution by this Court.

4. Respondents also suggest that the issue does not warrant review because the estimated annual cost of $43.8 million is a relatively small portion of the overall AFDC budget. Resp. Br. in Opp. 16-17. We respectfully disagree with respondents' assessment of the fiscal importance of almost $44 million annually, particularly in the context of a provision of the Deficit Reduction Act. Respondents confirm, moreover, that the reach of their argument is not limited to the inclusion of child's insurance benefits as "child support payments";[4] if other types of government benefits are also included in an expansive view of the child support disregard, the total cost would be significantly higher than the estimated amount.[5]

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majority [in the Eighth Circuit case] as the more persuasive authorities on the present issue." 561 A.2d at 624.

In addition to the decisions cited in our petition (Pet. 18 nn. 15 & 16) and in the response (Resp. Br. in Opp. 14 & n.3), a Pennsylvania appellate court recently followed the Fourth Circuit's decision and determined that child's insurance benefits were entitled to the disregard. See *Springer* v. *Dep't of Public Welfare*, 562 A.2d 1033 (Pa. Commw. Ct. 1989).

[4] See Resp. Br. in Opp. 16 (claiming that "the trend of the decisions is running strongly in the direction of applying the disregard to *any* child support, including Title II").

[5] Cf. Pet. 19 & n.18 (citing cases presenting claims that veterans' benefits are entitled to the AFDC "child support" disregard).

For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General

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